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U.S. DISTRICT COURT

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TEXAS-EASTERN

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

BY _____

JESSE J. SIMMONS \$
VS. \$ CIVIL ACTION NO. 4:04cv141
PLANO POLICE CHIEF, ET AL. \$

MEMORANDUM ORDER PARTIALLY ADOPTING THE MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Jesse J. Simmons, an inmate at the Robertson Unit, proceeding *pro se*, brought this civil rights suit pursuant to 42 U.S.C. § 1983 against the Plano Police Chief, Dr. Pho, and Terry Box.

The court heretofore referred this matter to the Honorable Don D. Bush, United States Magistrate Judge, at Sherman, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends this action be dismissed for want of prosecution.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. See FED. R. CIV. P. 72(b).

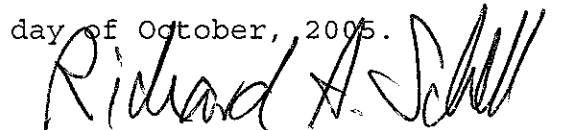
On October 7, 2005, Plaintiff filed a motion to voluntarily dismiss the above-styled action. Plaintiff is entitled to voluntarily dismiss the case prior to the service of any adverse parties. Fed. R. Civ. P. 41(a)(1). As the defendants have not been served, Plaintiff's motion should be granted and the case dismissed without prejudice.

O R D E R

For the reasons set forth above, it is

ORDERED that Plaintiff's motion to voluntarily dismiss this action is **GRANTED**. Accordingly, the Report of the Magistrate Judge are **ADOPTED** to the extent it recommended dismissal. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

Signed on this the 3rd day of October, 2005.

A handwritten signature in black ink, appearing to read "Richard A. Schell", written over a horizontal line.

RICHARD A. SCHELL

UNITED STATES DISTRICT JUDGE